IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION Nos.26617 of 1999 and 570 of 2000

W.P.No.26617 of 1999 :

Between:

B. Venumadhava Reddy, s/o. Bhaskar Reddy,

R/o.Inupamula Gram Panchayat,

Katepalli Mandal, Nalgonda District.

..... PETITIONER

AND

1. District Collector, Nalgonda District, Nalgonda.

2. District Panchayat Officer, Nalgonda District.

3. Inupamula Gram Panchayat, Katepalli Mandal,

Nalgonda District, rep.by its Sarpanch.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction more particularly in the nature of a Writ of Mandamus declaring the action of the respondents 1 and 2 in preventing the petitioner from laying pipeline from his residential house to his land in R.S.2 and 3 in Inupamula Village, Katepalli Mandal, Nalgonda District as per the resolution dt.28-7-1999 of R3 and consequently direct them not to interfere with the laying of the pipeline as per the above resolution.

Counsel for the Petitioner : MR. N.Subba Reddy.

Counsel for Respondents 1 and 2 : G.P. for Panchayat Raj and Rural Development.

Counsel for Respondent No.3 : MR.P.RAGHAVENDER REDDY

W.P.No.570 of 2000 :

Between:

S. Kancheswara Rao, s/o. Rangaiah,

R/o.Inupamula Gram Panchayat,

Katepalli Mandal, Nalgonda District.

..... PETITIONER

AND

1. District Collector, Nalgonda District, Nalgonda.

2. District Panchayat Officer, Nalgonda District.

3. Inupamula Gram Panchayat, Katepalli Mandal,

Nalgonda District, rep.by its Sarpanch.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction more especially in the nature of a Writ of Mandamus declaring as illegal and void the action of the respondents 1 and 2 in preventing the petitioner from laying pipeline from his residential house to his land in Survey Nos.469 and 470 in Inupamula Village, Katepalli Mandal, Nalgonda District as per the resolution dt.28-7-1999 of 3rd respondent and consequently direct them not to interfere with the laying of the pipeline as per the above resolution.

Counsel for the Petitioner : MR. S. Bharat Kumar.

Counsel for Respondents 1 and 2 : G.P. for Panchayat Raj and Rural Development.

Counsel for Respondent No.3 : MR.P.RAGHAVENDER REDDY

The Court made the following :

COMMON ORDER :

This common order shall dispose of both the writ petitions.

The petitioners in these writ petitions are residents of Inupamula Gram Panchayat in Katepalli Mandal of Nalgonda District. Both of them are agriculturists on their own wells. They laid pipelines from the well to their fields. A part of the pipeline was laid through the public street. On a complaint given by some of the villagers, the District Panchayat Officer, Nalgonda, by Memo dated 3-1-1998 directed the Sarpanch of the Village and
Sub-Inspector of Police to remove the pipelines. Aggrieved by the same, the petitioner in W.P.No.26617 of 1999 filed W.P.No.829 of 1998 and the petitioner in W.P.No.570 of 2000 filed W.P.No.877 of 1998 seeking invalidation of the Memo of the District Panchayat Officer. One Smt. K.Bhagyalakshmi filed W.P.No.9171 of 1999 seeking a direction to the Sarpanch to remove the pipelines laid by the petitioners herein through the public street.

A Division Bench of this Court by a common order dated 22-6-1999 dismissed the writ petitions filed by the petitioners herein and disposed of the writ petition filed by Smt. K.Bhagyalakshmi in terms of the order therein. This Court observed that unless and until the Gram Panchayat permits the petitioners by passing appropriate orders under Section 101 of Andhra Pradesh Panchayat Raj Act, 1994 (for brevity 'the Act'), the petitioners herein have no right to lay the pipelines through the public street. This Court also observed that unless such an order is passed by the Gram Panchayat, the petitioners cannot claim any legal right to continue to draw water to their fields by means of pipelines laid over the public street. It appears, the Gram Panchayat thereafter considered the applications/representations of the petitioners and passed a resolution on 28-7-1999 permitting the petitioners to lay the pipelines through the Panchayat roads. On the strength of the resolution, the petitioner in W.P.No.26617 of 1999 filed a review application being Rev.W.P.M.P.No.20480 of 1999. The Division Bench of this Court, by order dated 13-8-1999 while holding that there is no ground to review the earlier order dated 22-6-1999 gave liberty to the petitioner to seek such remedies as are available under law. Even thereafter, it is alleged that the District Panchayat Officer and the District Collector have made attempts to prevent the petitioners to carry the water to their fields from their wells. Therefore, these two writ petitions are filed praying for writ of mandamus declaring the action of respondents 1 and 2 in preventing the petitioners from laying the pipelines from their residential houses to their fields in the said village as per resolution of the Gram Panchayat dated 28-7-1999 as illegal and arbitrary. They also sought for a consequential direction to the respondents not to interfere with laying of the pipelines.

The matter was initially listed before me on 29-12-1999. While ordering Rule nisi, the following order was passed in W.P.M.P.No.33641 of 1999 in W.P.No.26617 of 1999.

There shall be interim direction subject to the petitioner giving undertaking to the Court that he will remove the water pipes from the Bore-well from his residential house to his land in R.S.Nos.2 and 3 of Inupamula Village, without claiming any equities or other benefits accruing in the resolution of the Gram Panchayat dated 28-7-1999 in the event of writ petition being dismissed.

After receiving notices, the Gram Panchayat has filed a counter affidavit bringing to the notice of this Court the factual position. Respondents 1 and 2 have not filed any counter affidavit. However, Smt. K.Bhagyalakshmi, who initially filed W.P.No.9171 of 1999 filed applications being W.P.M.P.No.9157 of 2000 in W.P.No.26617 of 1999 and W.P.M.P.No.10429 of 2000 in W.P.No.570 of 2000 seeking to implead her as party respondent to these writ petitions. These applications are also coming with the writ petitions. When Smt. K.Bhagyalakshmi filed a writ petition earlier, specifically seeking a direction to the Sarpanch to remove the pipelines laid by the petitioners herein, this Court did not pass any positive orders in her favour. Further, she has not specifically challenged the resolution of the Gram Panchayat dated 28-7-1999, which is admittedly passed in accordance with Section 101 of the Act, and therefore, in these writ petitions, she cannot be permitted to challenge the resolution. In a

sense, the petitioners are seeking to implement the resolution of the Gram Panchayat, which as on today is valid and holds the field. If Smt. K.Bhagyalakshmi is really aggrieved by the resolution by reason of which the petitioners would get a right to take water to their fields by laying the pipelines through the Panchayat streets, nothing prevented her to file a separate writ petition. In that view of the matter, I am of the considered opinion that Smt. K.Bhagyalakshmi is neither necessary party nor proper party and the two applications filed by her are liable to be dismissed and they are accordingly dismissed.

Insofar as the right of the petitioners to lay the pipelines to take the water to their fields through the public streets is concerned, the Division Bench of this Court in W.P.No.829 of 1998 etc., dated 22-6-1999 also observed that the petitioners would get an enforceable right only when a resolution is passed by the Gram Panchayat under Section 101 of the Act. Section 101(1) lays down that no person shall make holes or cause any obstruction in any public road vested in Gram Panchayat except with the previous permission of the Executive authority. Now that the Gram Panchayat has passed a resolution on 28-7-1999 permitting the petitioners to lay the pipelines subject to certain conditions. As observed by the Division Bench of this Court, the petitioners have an enforceable right and unless and until the resolution is rescinded or withdrawn or it is cancelled by the Government or the District Collector in accordance with Section 246 of the Act, respondents 1 and 2 cannot interfere with the right of the petitioners which they got by reason of the resolution passed by the Gram Panchayat.

In the result, for the above reasons, the writ petitions are allowed without any order as to costs.

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(V.V.S. RAO, J.)

Dt.18-08-2004.

Msr.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday, the Eighteenth Day of August, Two Thousand and Four.

To

1. District Collector, Nalgonda District, Nalgonda.

2. District Panchayat Officer, Nalgonda District.

3. Inupamula Gram Panchayat, Katepalli Mandal,

Nalgonda District, rep.by its Sarpanch.

4. 2 CCs to Government Pleader for Panchayat Raj and

Rural Development, High Court of A.P., Hyderabad.(OUT).

5. 2 CD copies.

HON'BLE SRI JUSTICE V.V.S. RAO

W.P.No.26617 of 1999 and W.P.No.570 of 2000

Dt.18-08-2004.

(Msr)